

**LAW ENFORCEMENT**

**Transfer of Sentenced Persons**

**Agreement Between the  
UNITED STATES OF AMERICA  
and HONG KONG**

Signed at Hong Kong April 15, 1997



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966  
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

## HONG KONG

### **Law Enforcement: Transfer of Sentenced Persons**

*Agreement signed at Hong Kong April 15, 1997;  
Transmitted by the President of the United States of America  
to the Senate May 5, 1997 (Treaty Doc. 105-7,  
105<sup>th</sup> Congress, 1<sup>st</sup> Session);  
Reported favorably by the Senate Committee on Foreign Relations  
October 14, 1998 (Senate Executive Report No. 105-24,  
105<sup>th</sup> Congress, 2d Session);  
Advice and consent to ratification by the Senate  
October 21, 1998;  
Ratified by the President December 18, 1998;  
Exchange of diplomatic notes at Hong Kong  
March 19, 1999;  
Entered into force April 18, 1999.*

AGREEMENT BETWEEN  
THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA  
AND THE GOVERNMENT OF HONG KONG  
FOR THE TRANSFER OF SENTENCED PERSONS

The Government of the United States of America, and the Government of Hong Kong, having been duly authorised to conclude this agreement by the sovereign government which is responsible for the foreign affairs relating to Hong Kong,

Desiring to cooperate fully in the transfer of sentenced persons by enabling such persons to serve sentences of imprisonment, confinement, or other form of deprivation of liberty in the jurisdiction of which they are citizens, nationals, or permanent residents, thereby facilitating their successfully reintegration into society;

Have agreed as follows:

ARTICLE 1  
DEFINITIONS

For the purposes of this Agreement:

- (a) "transferring Party" means the Party from whose jurisdiction the sentenced person may be, or has been, transferred;
  
- (b) "receiving Party" means the Party to whose jurisdiction the sentenced person may be, or has been, transferred;
  
- (c) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;
  
- (d) "sentenced person" means any person who has been sentenced by a court in the jurisdiction of the transferring Party;
  
- (e) "permanent resident" means a permanent resident of Hong Kong;
  
- (f) "citizen or national" means a citizen or national of the United States of America.

ARTICLE 2  
GENERAL PRINCIPLES

(1) This Agreement shall apply to the United States of America, its territories and possessions, and with respect to Hong Kong, Hong Kong Island, Kowloon and the New Territories.

(2) A sentenced person may be transferred from the jurisdiction of the transferring Party to the jurisdiction of the receiving Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him or her by the transferring Party.

ARTICLE 3  
CENTRAL AUTHORITIES

(1) Each Party shall designate a Central Authority to implement the provisions of this Agreement.

(2) The Central Authority for the United States of America shall be the Attorney General. The Central Authority for Hong Kong shall be the Attorney General. Either party may change its Central Authority, in which case it shall notify the other of the change.

ARTICLE 4  
CONDITIONS FOR TRANSFER

(1) A sentenced person may be transferred only on the following conditions:

(a) the acts or omissions for which the sentence has been imposed would constitute a criminal offence under the laws of the receiving Party; provided, however, that this condition shall not be interpreted to require that the offence described in the laws of both Parties be identical with respect to matters that do not affect the essential nature of the offence;

(b) where Hong Kong is the receiving Party, the sentenced person is a permanent resident of Hong Kong;

(c) where the United States of America is the receiving Party, the sentenced person is a citizen or national of the United States of America;

(d) at the time the request for transfer is received, the sentenced person has at least one year of the sentence to serve, or is serving an indeterminate or life sentence;

(e) the judgment is final, and no further proceedings relating to the offence are pending within the jurisdiction of the transferring Party;

(f) the transferring and receiving Parties and the sentenced person all agree to the transfer, provided that,

where in view of the age or physical or mental condition of the sentenced person, either Party considers it necessary, the sentenced person's consent may be given by the sentenced person's legal representative;

(g) when the United States of America is the transferring Party, and when the sentenced person has been sentenced by the courts pursuant to the laws of a State of the United States of America, the consent of the authorities of the State, as well as the consent of the federal authorities, shall be required for the transfer.

(2) In exceptional cases, the Parties may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1(d) of this Article.

#### ARTICLE 5 VERIFICATION OF CONSENT

(1) Each Party shall ensure that the person who gives consent to the transfer as required by Article 4(1)(f) does so voluntarily and with knowledge of the consequences thereof.

(2) The transferring Party shall permit an official designated by the receiving Party personally to verify, prior to the transfer, that the sentenced person's consent to the transfer in accordance with Article 4(1)(f) is given voluntarily and with knowledge of the consequences thereof.

ARTICLE 6

EFFECT OF TRANSFER FOR TRANSFERRING PARTY

(1) The taking into charge of the sentenced person by the authorities of the receiving Party shall have the effect of suspending the enforcement of the sentence by the authorities in the transferring Party.

(2) The transferring Party shall not enforce the sentence if the receiving Party considers enforcement of the sentence to have been completed.

ARTICLE 7

PROCEDURES FOR TRANSFER

(1) The Parties shall inform sentenced persons of their right to transfer under this Agreement. If a sentenced person wishes to be transferred, he or she may express such a wish to either Party which shall so inform the other Party in writing.

(2) A request for transfer may be made by the transferring Party or the receiving Party to the other Party. Each Party shall promptly inform the other Party of its decision whether to agree to a request for transfer.

(3) Requests for transfer shall be in writing and shall include the following information:

(a) the name, date and place of birth of the sentenced person;

(b) a statement indicating the citizenship, nationality, or residence status of the sentenced person; and

(c) the location of the sentenced person and permanent address, if available.

(4) Where a request for transfer has been made, the transferring Party shall, to the extent practicable, provide the receiving Party with the following information in writing:

(a) a statement of the facts upon which the conviction and sentence were based and the text of the legal provisions creating the offence;

(b) the nature and duration of the sentence, the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remission to which he or she is entitled on account of work done, good behavior, pre-trial confinement or other reasons;

(c) a copy of the certificate or record of conviction and sentence.

(5) Either Party shall, to the extent practicable, provide the other Party, if it so requests, with any relevant information, documents or statements before making a request for transfer or taking a decision on whether to agree to the transfer. In this regard, the receiving Party shall advise the transferring Party whether it intends to adapt the sentence in accordance with Article 8(3).

(6) Delivery of the sentenced person by the authorities of the transferring Party to those of the receiving Party shall occur on a date and at a place within the jurisdiction of the transferring Party agreed upon by both Parties.

(7) The Parties shall inform the sentenced person in writing of any action taken by the transferring Party or the receiving Party under the preceding paragraphs of this Article.

#### ARTICLE 8

##### CONTINUED ENFORCEMENT OF SENTENCE

(1) The receiving Party shall enforce the sentence as if the sentence had been imposed in the receiving Party or adapt the sentence under the conditions set forth in paragraph 3 of this Article.

(2) The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving Party, including those governing conditions for service of imprisonment, confinement or other deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release, remission or otherwise.

(3) If the sentence is by its nature or duration incompatible with the law of the receiving Party that Party may adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. When adapting the sentence, the

appropriate authorities of the receiving Party shall be bound by the findings of fact, insofar as they appear from any opinion, conviction, judgment, or sentence imposed in the transferring Party. The adapted sentence shall be no more severe than that imposed by the transferring Party in terms of nature or duration.

(4) The receiving Party may, if a sentenced person would be a juvenile according to its law, treat the sentenced person as a juvenile regardless of his or her status under the law of the transferring Party.

(5) The receiving Party shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring Party to pardon the sentenced person, or of any other decision or measure of the transferring Party that results in cancellation or reduction of the sentence.

(6) The receiving Party shall, if the transferring Party so requests, provide any information requested in relation to the enforcement of the sentence. Either Party may, at any time, request a special report on the status of the enforcement of an individual sentence.

ARTICLE 9  
RETENTION OF JURISDICTION

The transferring Party shall retain exclusive jurisdiction for the review of convictions and sentences issued by its courts.

ARTICLE 10  
TRANSIT OF SENTENCED PERSONS

If either Party transfers a sentenced person from another jurisdiction, the other Party shall cooperate in facilitating the transit through its territory of such a sentenced person. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 11  
LANGUAGE AND EXPENSES

(1) Written communications between the Parties shall be in an official language of the Party to which the communication is addressed.

(2) Any expenses incurred in relation to the transfer of the sentenced person or the continued enforcement of the sentence after transfer shall be borne by the receiving Party, except costs incurred by the transferring Party exclusively within the jurisdiction of the transferring Party. The receiving Party may,

however, seek to recover all or part of the costs of transfer from the sentenced person.

ARTICLE 12  
SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application, or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

ARTICLE 13  
APPLICATION

This Agreement shall be applicable to the transfer of sentenced persons who have been sentenced either before or after the entry into force of this Agreement.

ARTICLE 14  
FINAL PROVISIONS

(1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been completed.

(2) Either Party may terminate this Agreement at any time by giving notice to the other in writing. In that event, this Agreement shall cease to have effect three months after the date of receipt of the notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Agreement.

DONE at Hong Kong in duplicate, on this fifteenth day of April in the year of 1997, in the English and Chinese languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF  
HONG KONG:



美利堅合眾國政府和香港政府  
關於移交被判刑人的協定

美利堅合眾國政府與經負責管理與香港有關的外交事務的主權  
國政府正式授權締結本協定的香港政府，

願於移交被判刑人方面全面合作，讓被判刑人在身為其公民、  
國民或永久性居民的司法管轄區內接受被監禁、拘留或以任何  
其他形式被剝奪自由的刑罰，以協助被判刑人成功地重投社  
會，

協議如下：

## 第一條

### 釋義

就本協定而言

- (a) 「移交方」指從其司法管轄區可能或已經移交被判刑人的締約一方；
- (b) 「接收方」指向其司法管轄區可能或已經移交被判刑人的締約一方；
- (c) 「刑罰」指法院就某項刑事罪行下令有限期或無限期剝奪自由的任何處罰或措施；
- (d) 「被判刑人」指被移交方司法管轄區的法院判刑的人；
- (e) 「永久性居民」指香港永久性居民；
- (f) 「公民或國民」指美利堅合眾國公民或國民。

## 第二條

### 通則

- (1) 本協定適用於美利堅合眾國及其領地和屬地，並就香港而言，適用於香港島、九龍及新界。

- (2) 根據本協定規定，可將被判刑人由移交方司法管轄區移交至接收方司法管轄區，以執行移交方對該名被判刑人所訂定的刑罰。

### 第三條

#### 中心機關

- (1) 締約雙方須各自指定一個中心機關，以實施本協定的規定。
- (2) 美利堅合眾國的中心機關為司法部長。香港的中心機關為律政司。任何一方均可更改其中心機關，在此情況下，須將更改中心機關事宜通知另一方。

### 第四條

#### 移交條件

- (1) 被判刑人只可在下列條件下被移交：
- (a) 引致該刑罰的作為或不作為依據接收方的法律構成刑事罪行，不過，本條件不得被詮釋為要求締約雙方的法律所說明的有關罪行在不影響該罪行的主體性質方面必須一致；

- (b) 倘香港是接收方，被判刑人是香港永久性居民；
  - (c) 倘美利堅合眾國是接收方，被判刑人是美利堅合眾國公民或國民；
  - (d) 於接獲移交請求時，被判刑人尚須服刑最少一年，或被判無確定刑期或終身刑期而正在服刑者；
  - (e) 判決已屬最後判決，並且在移交方司法管轄區內就該罪行無任何未決的進一步訴訟；
  - (f) 移交方、接收方及被判刑人均同意移交，但如締約任何一方鑑於被判刑人的年紀或身體狀況或精神狀態而認為有需要，則被判刑人可由其法律代表同意移交。
  - (g) 倘美利堅合眾國為移交方，當被判刑人被法院根據美利堅合眾國某一個州的法律判刑時，移交須獲得該州的有關當局以及聯邦當局的同意。
- (2) 在例外情況下，即使被判刑人服刑的時間不足本條第(1)(d)段所規定者，締約雙方亦可同意移交。

## 第五條

### 核實同意

- (1) 締約任何一方均須確保根據本協定第四(1)(f)條的規定同意移交的人，是自願同意移交並理解移交的後果。

- (2) 移交方應准許接收方所指派的官員在移交前親自核實被判刑人是在根據本協定第四(1)(f)條的規定下自願同意移交並理解移交的後果。

## 第六條

### 移交被判刑人對移交方的影響

- (1) 被判刑人由接收方當局接管後，移交方當局即中止執行刑罰。
- (2) 接收方如認為刑罰已執行完畢，移交方將不執行有關刑罰。

## 第七條

### 移交的程序

- (1) 締約雙方應告知被判刑人其根據本協定規定可獲移交的權利。如被判刑人希望被移交，可向締約一方表達此種意願，由該締約方以書面通知另一締約方。
- (2) 移交請求可由移交方或接收方向另一方提出，締約任何一方均應盡快告知對方其是否同意移交請求的決定。
- (3) 移交請求應以書面提出，並應包括下列資料：

- (a) 被判刑人的姓名、出生日期及出生地點；
  - (b) 一份載列被判刑人的公民身份、國籍或居留身份的陳述書；及
  - (c) 被判刑人的所在及其永久住址(如有的話)。
- (4) 當移交請求提出後，移交方應盡可能以書面向接收方提供以下資料：
- (a) 據以定罪及判刑的事實的陳述，及把有關行為列為罪行的法律條文文本；
  - (b) 刑罰的性質及刑期、刑期屆滿日期(如適用的話)、被判刑人已服刑的時間，以及被判刑人因勞動、行為良好、審訊前拘留或其他原因而獲得的減刑；
  - (c) 定罪及刑罰證明書或紀錄的副本一份。
- (5) 締約任何一方均應在提出移交請求前，或決定是否同意移交前，因應對方的要求而盡可能向其提供任何有關的資料、文件或陳述書。就此而言，接收方應告知移交方其是否打算依照本協定第八(3)條修訂有關刑罰。
- (6) 移交方當局應於締約雙方商定的日期和移交方司法管轄區內的地點把被判刑人移交給接收方當局。
- (7) 締約雙方應以書面通知被判刑人有關移交方或接收方依照本條以上各段所述而採取的任何行動。

## 第八條

### 繼續執行刑罰

- (1) 接收方將執行有關刑罰如同該刑罰在接收方判處一樣，或依照本條第(3)段所列的情況修訂有關刑罰。
- (2) 於被判刑人移交後繼續執行刑罰，須適用接收方的法律及程序，包括規定有關監禁、拘留或其他剝奪自由方式的條件，及以假釋、有條件釋放、赦免或其他方式縮短監禁、拘留或其他剝奪自由方式的期間的法律及程序。
- (3) 假如刑罰在性質或刑期方面與接收方的法律不符，則接收方可根據本身法律對同類罪行制定的刑罰修訂有關刑罰。就刑罰作出修訂時，接收方的合適當局須以可見諸於移交方在任何意見書、定罪書、判決書、或所判處的刑罰中作出對事實的研判為依據。修訂後的刑罰在性質或期限上，都不能比移交方所判刑罰更為嚴厲。
- (4) 假如根據接收方的法律，被判刑人是未成年人，則不論被判刑人根據移交方的法律屬何種地位，接收方都可以將被判刑人當作未成年人看待。
- (5) 一俟獲悉移交方作出赦免被判刑人的決定，或移交方作出任何導致有關刑罰被撤銷或寬減的決定或措施後，接收方應立即修改或終止執行有關刑罰。
- (6) 假如移交方提出要求，接收方須提供任何其所要求的有關執行刑罰的資料，締約任何一方可在任何時間要求對方提供一份有關個別刑罰執行情況的特別報告。

## 第九條

### 管轄權的保留

移交方將保留覆核其法院所作判決及刑罰的唯一管轄權。

## 第十條

### 被判刑人過境

假如締約任何一方從另一個司法管轄區移交被判刑人，則締約另一方須予合作，讓該被判刑人過境。打算進行該種移交的締約一方須事先將上述過境事宜通知締約另一方。

## 第十一條

### 語文及開支

- (1) 締約雙方在書面上的聯繫，須以受文一方的法定語文寫成。

- (2) 除在移交方管轄區內由移交方引致的費用外，移交被判刑人或在移交被判刑人後繼續執行刑罰所涉及的任何開支，均須由接收方負擔。但接收方可以向被判刑人追討全部或部分移交費用。

## 第十二條

### 解決爭議

因本協定的解釋、適用或執行產生的任何爭議，如締約雙方中心機關無法自行達成協議，則須通過外交渠道解決。

## 第十三條

### 適用範圍

本協定適用於無論是在本協定生效之前或之後被判刑的人的移交。

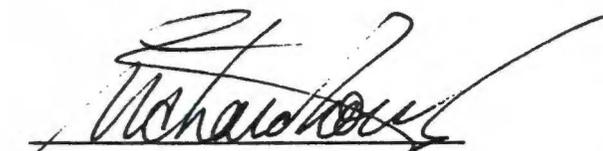
第十四條

最後條款

- (1) 本協定將於締約雙方以書面通知對方已各自完成為使本協定生效的規定之日期後三十天開始生效。
- (2) 任何一方可隨時以書面通知另一方終止本協定。在這種情況下，本協定於接獲該通知之日起的三個月後失效。

下列簽署人，經其各自政府正式授權，已在本協定上簽字為證。

本協定於一九九七年四月十五日在香港簽訂，一式兩份，以英文及中文寫成，兩種文本均具有同等效力。



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美利堅合眾國政府代表



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香港政府代表